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No. 03-

IN THE

# Supreme Court of the United States

LOUIS R. NAPOLI,

*Petitioner*,

*v.*

FIRST UNUM LIFE INSURANCE COMPANY,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* contains no statutory language or congressional history indicating whether beneficiaries thereunder are entitled to trials by jury in actions seeking legal, rather than equitable, relief. The Second Circuit affirmed the District Court's determination that Petitioner Lou Napoli was not entitled to a jury trial to determine whether Defendant-Respondent First UNUM Life Insurance Company must pay Mr. Napoli his past due long term disability benefits upon a *de novo* review by the federal courts. The Second Circuit's ruling is consistent with the ruling of nine other circuits who deny beneficiaries under ERISA the right to a trial by jury when evaluating their entitlement to past due benefits, reasoning that claims for past due benefits against fiduciaries under ERISA are inherently equitable, rather than legal, in nature. In *Great-West Life and Annuity Insurance Company v. Knudson*, 534 U.S. 204 (2002), this Court ruled that claims for past due monies under ERISA are legal, not equitable, in nature.

The question presented is whether an ERISA beneficiary who brings an action in federal court seeking past due benefits under § 502(a)(1)(B) of ERISA is entitled to a trial by jury?

## TABLE OF CONTENTS


| | *Page* |
|---|---|
| Questions Presented | i |
| Table of Contents | ii |
| Table of Cited Authorities | iv |
| Table of Appendices | vii |
| Opinion Below | 1 |
| Statement of Jurisdiction | 1 |
| Constitution and Statutory Provisions Involved | 1 |
| Statement of the Case | 2 |
| Reasons for Granting the Petition | 5 |
| I. The Equitable Versus Legal Distinction Employed By The Circuit Courts To Deny Plan Beneficiaries A Right To A Jury Trial Under ERISA Conflicts Directly With This Court's Decision In *Great-West*, Thus Warranting Intervention By This Court To Resolve This Important Constitutional Question | 7 |

*Contents*

*Page*

II. The Urgent Need For This Court To Answer The Question Regarding The Right To A Jury Trial In The First And District Of Columbia Circuits, Coupled With The Confusion That Has Started To Occur In The Wake Of The *Great-West* Decision Presents Additional Compelling Reasons For The Granting Of The Writ ..... 12

Conclusion ..... 14

## TABLE OF CITED AUTHORITIES

*Page*

**Cases:**

*Adams v. Cyprus Amax Minerals Co.*,
149 F.3d 1156 (10th Cir. 1998) ..... 6

*Bair v. General Motors Corp.*,
895 F.2d 1094 (6th Cir. 1990) ..... 6

*Berry v. Ciba-Geigy Corp.*,
761 F.2d 1003 (4th Cir. 1985) ..... 6

*Bona v. Barasch*,
2003 WL 1395932 (S.D.N.Y. 2003) ..... 13

*Borst v. Chevron Corp.*,
36 F.3d 1308 (5th Cir. 1994) ..... 6

*Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*,
494 U.S. 558 (1990) ..... 5, 11

*DeFelice v.American Intern. Life Assur. Co. of New York*,
82 F.3d 1251 (2d Cir. 1996) ..... 6

*Firestone Tire & Rubber Co. v. Bruch*,
489 U.S. 101 (1989) ..... *passim*

*Great-West Life and Annuity Insurance Company v. Knudson*,
534 U.S. 204 (2002) ..... *passim*

*Cited Authorities*


| | Page |
|---|---|
| *Hunt v. Hawthorne Associates, Inc.*, 119 F.3d 888 (11th Cir.1997) | 6 |
| *Liston v. Unum Corporation Officer Severance Plan*, 330 F.3d 19 (3d Cir. 2003) | 12 |
| *Mathews v. Sears Pension Plan*, 144 F.3d 46, (7th Cir. 1998) | 6 |
| *McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29 (D.D.C 1991) | 5, 12 |
| *Pane v. RCA Corp.*, 868 F.2d 631 (3rd Cir.1989) | 6 |
| *Recupero v. The New England Telephone and Telegraph Co.*, 118 F.3d 820 (1st Cir. 1997) | 12 |
| *Sullivan v. LTV Aerospace and Defense Co.*, 82 F.3d 1251 (2d Cir. 1996) | 6, 10 |
| *Thomas v. Oregon Fruit Products Co.*, 228 F.3d 991 (9th Cir. 2000) | 6 |
| *In re Vorpahl*, 695 F.2d 318 (8th Cir. 1982) | 6 |

*Cited Authorities*

*Page*

**United States Constitution:**

Seventh Amendment ..... 1, 10-11

**Statutes:**

28 U.S.C. § 1254(1) ..... 1

29 U.S.C. § 1001, *et seq.* ..... i, 2

29 U.S.C. § 1132(a)(1)(B) ..... *passim*

29 U.S.C. § 1132(a)(2) ..... 13

29 U.S.C. § 1132(a)(3) ..... 8

29 U.S.C. § 1331 ..... 3

29 U.S.C. § 1332 ..... 3

**Other Authority:**

Restatement of Trusts (Second) § 198 (1959) ..... 8

## TABLE OF APPENDICES

*Page*

Appendix A — Summary Order Of The United States Court Of Appeals For The Second Circuit Filed October 29, 2003 ..... 1a

Appendix B — Opinion And Order Of The United States District Court For The Southern District Of New York Dated January 13, 2003 ..... 8a

## OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at Napoli v. First UNUM Life Insurance Company, 78 Fed. Appx. 787 (2d Cir. 2003). The Second Circuit vacated and remanded for further proceedings the Opinion and Order of the United States District Court for the Southern District of New York, reported at 2003 WL 118504 (S.D.N.Y. 2003). *See* Appendices A and B.

## STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Second Circuit's Summary Order and Opinion was rendered on October 29, 2003.

## CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

### U.S. Constitution, Amendment VII [Right to Trial By Jury]

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

**29 U.S.C. § 1132(a)(1)(B)**
**[ERISA § 502(a)(1)(B)]**

§ 1132. Civil Enforcement

(a) Persons empowered to bring a civil action.

A civil action may be brought —

(1) by a participant or beneficiary —

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under terms of the plan;

## STATEMENT OF THE CASE

This case involves Petitioner's challenge to a determination by Respondent First UNUM Life Insurance Company ("First Unum") terminating Petitioner Lou Napoli's long term disability benefits under a group contract of long term disability insurance governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA").

Mr. Napoli suffers from triple coronary artery disease, which led to a severe heart attack he suffered on November 29, 1996, while working in his occupation as a government securities bond broker at his then employer, Garban LLC.

Mr. Napoli filed a claim for long term disability benefits under a group disability income policy issued by First Unum to Garban LLC under which Mr. Napoli was a plan beneficiary. The policy pays benefits to Mr. Napoli in the sum of $9,263.33 per month in the event that he is unable to perform each of the material duties of his regular occupation.

First Unum initially accepted the claim, agreed that Mr. Napoli was totally disabled and paid monthly benefits to him for seven months. Thereafter, First Unum determined that Mr. Napoli was not disabled within the meaning of the contract and terminated his monthly benefits on September 4, 1997. Mr. Napoli timely appealed First Unum's adverse benefit determination to First Unum as required by the group contract, and First Unum upheld its determination to deny Mr. Napoli the disability income benefits he was seeking.

Mr. Napoli commenced this action against First Unum in the United States District Court for the Southern District of New York on February 23, 1999. Federal jurisdiction over Mr. Napoli's initial Complaint was premised upon diversity, 29 U.S.C. § 1332. On October 31, 2000, Mr. Napoli filed a First Amended Complaint, however, seeking relief against First Unum exclusively under ERISA, thus asserting federal jurisdiction under 29 U.S.C. § 1331. Both Mr. Napoli's initial Complaint and his First Amended Complaint demanded a trial by jury.

Prior to the taking of any discovery, First Unum moved for "judgment on the administrative record," essentially seeking an order confirming its administrative determination that Mr. Napoli was not entitled to past or future long term disability benefits. Mr. Napoli opposed the motion, arguing that the motion was, in essence, a motion for summary judgment. Mr. Napoli cross-moved for discovery and a trial by jury.

By judgment dated January 16, 2003, the District Court granted First Unum summary judgment dismissing Mr. Napoli's Complaint. In its Opinion and Order dated January 14, 2003 (Appdx. B), the District Court determined that no issues of fact existed such that summary judgment in favor of First Unum was warranted, and ruled that, among other things, Mr. Napoli was not entitled to a trial by jury or to any discovery.

Mr. Napoli filed a timely appeal from the Judgment to the United States Court of Appeals for the Second Circuit. On appeal, the Second Circuit, in an unpublished summary order, vacated and remanded the District Court's Order, primarily upon the grounds that issues of fact were presented on the summary judgment record warranting a denial of First Unum's motion for summary judgment. In addition, the Second Circuit, *inter alia*, affirmed the District Court's Decision to deny Mr. Napoli's application for a trial by jury.

As of the date of the filing of this Petition, Mr. Napoli is owed approximately $696,000 in past due long term disability benefits from First Unum, excluding interest.

Litigation is currently ongoing in the District Court in keeping with the Second Circuit remand.

## REASONS FOR GRANTING THE PETITION

The Court needs to determine the right to a jury trial for the many thousands of plan beneficiaries seeking to enforce their rights to contractually defined benefits covered by ERISA-governed plans under § 502(a)(1)(B) of ERISA, where ten circuit courts have deprived plan beneficiaries of their right to jury trials, upon an equitable versus legal relief distinction, the underpinnings of which this Court overruled in *Great-West Life and Annuity Insurance Company v. Knudson*, 534 U.S. 204 (2002). Moreover, the First Circuit has not yet ruled on this issue and the District of Columbia Circuit has not yet ruled this issue, although a District Court determination ruling that jury trials are available under ERISA since 1991 continues to be followed in the District of Columbia Circuit. *McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29 (D.D.C. 1991). Thus, this Court's intervention is critical to protect the jury trial rights of thousands of plan beneficiaries, to clarify the issue among the circuits and correct the now flawed rationale for those circuits that deprive plan beneficiaries of a jury trial under § 502(a)(1)(B) of ERISA.

As this Court is aware, ERISA is silent as to whether plan beneficiaries seeking to enforce their rights in the Federal Courts are entitled to a trial by jury. Given the absence of statutory language or a clear direction from the legislative history to determine congressional intent regarding the jury trial issue, federal courts must analyze the nature of the underlying relief sought prior to the enactment of the statute to determine if the nature of the relief sought was such that, at common law, it is the type of relief that ordinarily would be tried to a jury. *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 564-65 (1990).

In keeping with the foregoing analysis, the ten federal circuit courts to have addressed the issue all conclude that the relief sought by plan beneficiaries under ERISA is equitable, rather than legal, in nature, and, accordingly, conclude that plan beneficiaries are not entitled to trial by jury. *See, e.g., Sullivan v. LTV Aerospace and Defense Co.*, 82 F.3d 1251, 1257-59 (2d Cir. 1996); *DeFelice v. American Intern. Life Assur. Co. of New York*, 82 F.3d 1251, 1257-59 (2d Cir. 1996); *Pane v. RCA Corp.*, 868 F.2d 631, 636 (3d Cir. 1989); *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1006-07 (4th Cir. 1985); *Borst v. Chevron Corp.*, 36 F.3d 1308, 1323-24 (5th Cir. 1994), *cert. denied*, 514 U.S. 1066 (1995); *Bair v. General Motors Corp.*, 895 F.2d 1094, 1096-97 (6th Cir. 1990); *Mathews v. Sears Pension Plan*, 144 F.3d 461 (7th Cir. 1998), *cert. denied*, 525 U.S. 1054 (1998); *In re Vorpahl*, 695 F.2d 318, 320-22 (8th Cir. 1982); *Thomas v. Oregon Fruit Products Co.*, 228 F.3d 991, 996-97 (9th Cir. 2000); *Adams v. Cyprus Amax Minerals Co.*, 149 F.3d 1156, 1159-62 (10th Cir. 1998); *Hunt v. Hawthorne Associates, Inc.*, 119 F.3d 888 (11th Cir. 1997), *cert denied*, 523 U.S. 1120 (1998). As an additional factor, two circuit courts reason that jurors will fail to apprehend the arbitrary and capricious standard of review found in many ERISA benefit actions as an additional persuasive factor militating against jury trials in § 502(a)(1)(B) actions. *Sullivan v. LTV Aerospace and Defense Co.*, 82 F.3d 1251, 1257-59 (2d Cir. 1996); *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1006-07 (4th Cir. 1985).

## I. The Equitable Versus Legal Distinction Employed By The Circuit Courts To Deny Plan Beneficiaries A Right To A Jury Trial Under ERISA Conflicts Directly With This Court's Decision In *Great-West*, Thus Warranting Intervention By This Court To Resolve This Important Constitutional Question

In ruling that no jury trial is available to ERISA plan beneficiaries seeking damages for past due benefits under group contracts, these ten circuits have all determined that actions for past due benefits by plan beneficiaries are, in essence, equitable claims seeking to compel trustees to pay past due monies. That rationale was completely rejected by this Court in *Great-West Life & Ann. Ins. Co. v. Knudson*, 534 U.S. 204 (2002). In *Great-West*, this Court reasoned that a claim for money due and owing under a contract, such as one for disability benefits, is an action at law. In relevant part, the Court stated:

> A claim for money due and owing under a contract is quintessentially an action at law. Almost invariably . . . suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for "money damages," as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty. And money damages are, of course, the classic form of legal relief.

*Id.* at 210 (internal quotations and citations omitted).

In *Great-West*, this Court distinguished between the potential legal remedies afforded to a plan participant under Section 502(a)(1)(B) of ERISA (29 U.S.C. § 1132[a][1][B]) and the more limited equitable remedies afforded to plan fiduciaries by Section 502(a)(3) of ERISA. *Great-West*, 534 U.S. at 221. Significantly, this Court held that equitable remedies are not available to compel money past due under a contract as in the instant case. *Id.* at 210, 212-14, 221 (holding injunctive and other equitable restitutionary remedies unavailable for money due and owing under a contract).

The legal-equitable distinction contained in ERISA's civil enforcement provisions, as outlined in *Great-West*, is in accord with the principles of trust law which guide the federal courts in construing the rights of plan participants in ERISA-governed plans. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110-11 (1989). Significantly, the Restatement of Trusts provides, "[i]f the trustee is under a duty to pay money immediately and unconditionally to the beneficiary, the beneficiary can maintain an action at law against the trustee to enforce payment." Restatement of Trusts (Second) § 198 (1959). This applies to the instant case, where First UNUM, the trustee, is under a contractual duty to pay Mr. Napoli, the beneficiary, past due disability income benefits if Mr. Napoli's lawsuit is successful.

Critically, many of the circuits who have rejected the right to trial by jury under the statutory scheme also misplaced their reliance on this Court's decision in *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989), where, as here, the parties agree that the case involves a *de novo* review of Mr. Napoli's denied claim for benefits. Specifically, the circuit courts have relied upon *Firestone* to state that the trust-

like nature of ERISA renders claims made thereunder equitable, rather than legal, in nature. This analysis is not only belied by the restatement of trusts, as set forth above, but is also belied by the reasoning of *Firestone* itself. As this Court stated in *Firestone*:

> The trust law *de novo* standard of review is consistent with the judicial interpretation of employee benefit plans prior to the enactment of ERISA. Actions challenging an employer's denial of benefits before the enactment of ERISA were governed by principles of contract law. If the plan did not give the employer or administrator discretionary or final authority to construe uncertain terms, the Court reviewed the employee's claim as it would any other contract claim – by looking to the terms of the plan and other manifestations of the parties' intent.

*Id.* at 112-13.

Thus, any references to *Firestone*'s reliance upon language and terminology of trust law under ERISA to determine whether a jury trial is available in a *de novo* review case directly contradicts the reasoning of the decision itself. Mr. Napoli's claim undisputably seeks a *de novo* review by the federal courts of his denied disability benefits by First UNUM, who now owes Mr. Napoli almost $700,000. As explained by this Court in *Firestone*, Mr. Napoli has nothing more than a traditional claim for breach of contract seeking past disability benefits. This is plainly an action at law and the considerations of the ten circuit courts concerning the trust-like nature of ERISA, based upon their reliance on *Firestone*, is entirely misplaced.

Even where discretionary authority has been delegated to a fiduciary, making the arbitrary and capricious standard of review applicable to the judicial review of a claim for past due benefits, this Court's analysis in *Firestone* and *Great-West*, coupled with the legion of cases emphasizing the importance of the preservation of the constitutional right to a trial by jury, require a determination that those suits for past due benefits are also entitled to a trial by jury. Moreover, those courts that have determined a jury trial is inappropriate in a case involving an arbitrary and capricious standard of review base their determination on a rationale that underestimates the ability of the jurors to understand such a standard of review or receive an appropriate jury charge regarding same. *See, e.g., Sullivan v. LTV Aerospace and Defense Co.*, 82 F.3d 1251, 1258 (2d Cir. 1996) (reasoning that arbitrary and capricious standard of review of the administrators' claim determination "[i]s not readily communicated to jurors"). Jurors are compelled to reach verdicts on a daily basis based on varying standards of evidence and complex jury charges in all types of matters including fraud, civil RICO, criminal and other civil matters. Applying an arbitrary and capricious standard will not depart significantly from that asked of any jurors on a daily basis. In any event, such a rationale does not provide a sufficient basis to disregard such a jealously-guarded constitutional protection.

Based on the sound reasoning of *Great-West* and the principles of trust law, Mr. Napoli's claims for past due benefits are legal in nature. While Mr. Napoli's First Amended Complaint also seeks declaratory relief in the form of payment of future benefits, this Court has held that where legal (backpay) and equitable remedies (breach of fiduciary duty) are equipoised in the same action, a plaintiff's Seventh

Amendment right to a jury trial shall not be derogated. *See Chauffeurs Teamsters and Helpers v. Terry*, 494 U.S. 558, 573 (1990).

As this Court instructed in *Chauffeurs*:

> Since the merger of the systems of law and equity, this Court has carefully preserved the right to trial by jury where legal rights are at stake. Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.

*Chauffeurs and Teamsters*, 494 U.S. at 564-65, *supra* (internal quotations and citations omitted).

Unfortunately, while ERISA was intended to broaden, not curtail, the protections and rights afforded to plan beneficiaries prior to its enactment, *see Firestone*, 489 U.S. at 113-14, *supra*, the Second Circuit's previous holdings and the holdings of other circuits have unconstitutionally curtailed beneficiaries like Mr. Napoli's right to a jury trial. These beneficiaries would have enjoyed this right but for the ironic circumstance of their disability plans falling under a statute designed to afford them greater procedural protections.

## II. The Urgent Need For This Court To Answer The Question Regarding The Right To A Jury Trial In The First And District Of Columbia Circuits, Coupled With The Confusion That Has Started To Occur In The Wake Of The *Great-West* Decision Presents Additional Compelling Reasons For The Granting Of The Writ

This Court should grant this writ not only to clarify plan beneficiaries' rights to trial by jury in actions seeking past monies due under § 502(a)(1)(B) of ERISA, but to clarify those rights in the First Circuit and the District of Columbia Circuit. Moreover, District Courts all over the country need clear precedent from this Court as they are repeatedly being asked to re-visit the jury trial issue in light of *Great-West*.

The First Circuit has, for example, continued to expressly decline to rule whether jury trials are available in *de novo* review cases under ERISA. *Liston v. Unum Corporation Officer Severance Plan*, 330 F.3d 19, 24 n.4 (3d Cir. 2003). The First Circuit has, however, noted the existence of varying opinions in the federal courts concerning the right of an insured to have a jury make factual findings. *Recupero v. The New England Telephone and Telegraph Co.*, 118 F.3d 820, 831 (1st Cir. 1997).

The District of Columbia Circuit has also not ruled on the question whether jury trials are available in *de novo* cases involving claims for past due benefits under ERISA. Nevertheless, the District of Columbia District Court ruled in 1991 that jury trials were available under those circumstances. *McDonald v. Artcraft Electric Supply Company*, 774 F. Supp. 29, 33-36 (D.D.C. 1991). The District Court in *McDonald* distinguished cases from other circuits

and correctly employed the analysis contained in this Court's decision in *Firestone* from a breach of contract, rather than trust law, standpoint.

Moreover, a New York District Court recently ruled that current and former employees participating in an employee benefit fund had the right to a jury trial, in their action against the trustees of that firm, for damages resulting from the trustees' mismanagement of that fund. *Bona v. Barasch*, 2003 WL 1395932 (S.D.N.Y. 2003). In *Bona*, the Court stated that while *Great-West* did not "[d]eal with the right to a trial by jury *per se*, the Supreme Court's explication of the distinction between law and equity," was relevant to its analysis whether the plaintiffs were entitled to a jury trial on their ERISA claims. 2003 WL 1395932, at *34. While the Court in *Bona* analyzed the legal and equitable distinction in an action arising under § 501(a)(2), not § 502(a)(1)(B), as in this case, this distinction does not change the analysis or the result in light of this Court's decision in *Great-West*.

Accordingly, this Court should grant this Writ of Certiorari to clarify and unify the variances between the circuits and the need for consistency amongst the circuits in light of this Court's decision in *Great-West*.

## CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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